

Coast Guard, DHS

§ 138.60

gross ton threshold, if applicable, the required applicable amounts of financial responsibility, and limits of liability under Section 1004 of OPA 90 (33 U.S.C. 2704), including subpart B of this part, and Section 107 of CERCLA (42 U.S.C. 9607). The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(2) For a vessel not measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention. The vessel's gross tonnage under 46 CFR part 69, subpart B, or, if applicable, subpart E, is used for determining the 300 gross ton threshold, if applicable, the required applicable amount of financial responsibility, and the limits of liability under Section 1004 of OPA 90 (33 U.S.C. 2704), including subpart B of this part, and Section 107 of CERCLA (42 U.S.C. 9607). The measurement standards applied are subject to applicable international agreements to which the United States is a party.

(f) A person who agrees to act as a guarantor or a self-insurer is bound by the vessel's gross tonnage as determined under paragraphs (c), (d), or (e) of this section, regardless of what gross tonnage is specified in an Application or guaranty form submitted under this subpart. Guarantors, however, may limit their liability under a guaranty of financial responsibility to the applicable gross tonnage appearing on a vessel's International Tonnage Certificate or other official, applicable certificate of measurement and will not incur any greater liability with respect to that guaranty, except when the guarantors knew or should have known that the applicable tonnage certificate was incorrect.

§ 138.40 Forms.

All forms referred to in this subpart may be obtained from NPFC by requesting them in writing at the address given in § 138.45(a) or by clicking on the Forms link at the NPFC E-COFR Web site, <http://www.npfc.gov/cofr>.

§ 138.45 Where to apply for and renew Certificates.

(a) An operator must submit all Applications for a Certificate and all re-

quests for renewal of a Certificate, together with all evidence of financial responsibility required under § 138.80 and all fees required under § 138.130, to the NPFC at the following address: Director National Pollution Funds Center, NPFC CV MS 7100, U.S. Coast Guard, 4200 Wilson Blvd., Suite 1000, Arlington, VA 20598-7100, telephone (202) 493-6780, Telefax (202) 493-6781; or electronically using NPFC's E-COFR Web-based process at <http://www.npfc.gov/cofr>.

(b) All requests you have for assistance in completing Applications, requests for renewal and other submissions under this subpart, including telephone inquiries, should be directed to the U.S. Coast Guard NPFC at the addresses in paragraph (a) of this section.

[USCG-2005-21780, 73 FR 53697, Sept. 17, 2008, as amended by USCG-2009-0416, 74 FR 27441, June 10, 2009]

§ 138.50 Time to apply.

(a) A vessel operator who wishes to obtain a Certificate must submit a completed Application form and all required supporting evidence of financial responsibility, and must pay all applicable fees, at least 21 days prior to the date the Certificate is required. The Director, NPFC, may grant an extension of this 21-day deadline upon written request and for good cause shown. An applicant seeking an extension of this deadline must set forth the reasons for the extension request and deliver the request to the Director, NPFC, at least 15 days before the deadline. The Director, NPFC, will not consider a request for an extension of more than 60 days.

(b) The Director, NPFC, generally processes Applications and requests for renewal in the order in which they are received at the NPFC.

§ 138.60 Applications, general instructions.

(a) You may obtain an Application for Vessel Certificate of Financial Responsibility (Water Pollution) (Form CG-5585) by following the instructions in §§ 138.40 and 138.45.

(b) Your Application and all supporting documents must be in English, and express all monetary terms in United States dollars.

(c) An authorized official of the applicant must sign the signature page of the Application. The title of the signer must be shown in the space provided on the Application. The operator must submit the original signature page of the Application to NPFC in hard copy.

(d) If the signer is not identified on the Application as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director, chief executive officer, or any other duly authorized officer of a corporate applicant, the Application must be accompanied by a written statement certifying the signer's authority to sign on behalf of the applicant.

(e) If, before the issuance of a Certificate, the applicant becomes aware of a change in any of the facts contained in the Application or supporting documentation, the applicant must, within 5 business days of becoming aware of the change, notify the Director, NPFC, in writing, of the changed facts.

§ 138.65 Issuance of Certificates.

Upon the satisfactory demonstration of financial responsibility and payment of all fees due, the Director, NPFC, will issue a Vessel Certificate of Financial Responsibility (Water Pollution) (Form CG-5585) in electronic form. Copies of the Certificate may be downloaded from NPFC's E-COFR Web site.

§ 138.70 Renewal of Certificates.

(a) The operator of a vessel required to have a Certificate under this subpart must submit a written or E-COFR request for renewal of the Certificate to the NPFC at least 21 days, but not earlier than 90 days, before the expiration date of the Certificate. A letter may be used for this purpose. The request for renewal must comply in all other respects with the requirements in § 138.60 concerning Applications. The Director, NPFC, may waive this 21-day requirement for good cause shown.

(b) The operator must identify in the request for renewal any changes which have occurred since the original Application for a Certificate was filed, and must set forth the correct information in full.

§ 138.80 Financial responsibility, how established.

(a) *General.* In addition to submitting an Application, requests for renewal, and fees, an applicant must file, or cause to be filed, with the Director, NPFC, evidence of financial responsibility acceptable to the Director, NPFC, in an amount equal to the total applicable amount determined under § 138.80(f)(3). A guarantor may file the evidence of financial responsibility on behalf of the applicant directly with the Director, NPFC.

(b) *Methods.* An applicant or certificant must establish and maintain evidence of financial responsibility by one or more of the following methods:

(1) *Insurance.* By filing with the Director, NPFC, an Insurance Guaranty (Form CG-5586) or, when applying for a Master Certificate under § 138.110, a Master Insurance Guaranty (Form CG-5586-1), executed by not more than four insurers that have been found acceptable by, and remain acceptable to, the Director, NPFC, for purposes of this subpart.

(2) *Surety bond.* By filing with the Director, NPFC, a Surety Bond Guaranty (Form CG-5586-2), executed by not more than 10 acceptable surety companies certified by the United States Department of the Treasury with respect to the issuance of Federal bonds in the maximum penal sum of each bond to be issued under this subpart.

(3) *Self-insurance.* By filing with the Director, NPFC, the financial statements specified in paragraph (b)(3)(i) of this section for the applicant's fiscal year preceding the date of Application and by demonstrating that the applicant or certificant maintains, in the United States, working capital and net worth each in amounts equal to or greater than the total applicable amount determined under § 138.80(f)(3), based on a vessel carrying hazardous substances as cargo. As used in this paragraph, working capital means the amount of current assets located in the United States, less all current liabilities anywhere in the world; and net worth means the amount of all assets located in the United States, less all liabilities anywhere in the world. For each fiscal year after the initial filing,